

1-1 By: Brimer S.B. No. 908
1-2 (In the Senate - Filed March 6, 2007; March 7, 2007, read
1-3 first time and referred to Committee on Government Organization;
1-4 March 20, 2007, reported favorably by the following vote: Yeas 6,
1-5 Nays 0; March 20, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the continuation and functions of the State Office of
1-9 Risk Management.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 412.011, Labor Code, is amended by
1-12 adding Subsections (f), (g), (h), and (i) to read as follows:

1-13 (f) The office shall work with each state agency to develop
1-14 an agency-level business continuity plan under Section 412.054.

1-15 (g) The office shall make available to each agency subject
1-16 to Section 412.054 guidelines and models for each element listed in
1-17 Section 412.054. The office shall assist the agency as necessary to
1-18 ensure that:

1-19 (1) agency staff understands each element of the
1-20 business continuity plan developed under Section 412.054; and

1-21 (2) each agency practices implementation of the plan.

1-22 (h) The office and the Texas Building and Procurement
1-23 Commission shall adopt a memorandum of understanding that:

1-24 (1) includes the type, amount, and frequency of
1-25 safety-related information that may be shared between the office
1-26 and the commission; and

1-27 (2) designates points of contact within the office and
1-28 the commission to coordinate the sharing of information.

1-29 (i) The office shall:

1-30 (1) maintain a system to promptly and efficiently act
1-31 on complaints filed with the office;

1-32 (2) maintain information about parties to the
1-33 complaint, the subject matter of the complaint, a summary of the
1-34 results of the review or investigation of the complaint, and
1-35 disposition of the complaint;

1-36 (3) make information available describing the office's
1-37 procedures for complaint investigation and resolution; and

1-38 (4) periodically notify the complaint parties of the
1-39 status of the complaint until final disposition.

1-40 SECTION 2. Subchapter B, Chapter 412, Labor Code, is
1-41 amended by adding Sections 412.0125 through 412.0128 to read as
1-42 follows:

1-43 Sec. 412.0125. RETURN-TO-WORK COORDINATION SERVICES; CASE
1-44 MANAGEMENT. (a) The office shall provide each state agency with
1-45 return-to-work coordination services as necessary to facilitate an
1-46 injured employee's return to employment. The office shall notify
1-47 each state agency of the availability of return-to-work
1-48 coordination services.

1-49 (b) As part of return-to-work coordination services under
1-50 this section, the office shall:

1-51 (1) establish a time frame for case management of an
1-52 injured employee that ensures services are provided to the injured
1-53 employee as soon as practicable to improve the employee's chance of
1-54 returning to work as quickly as possible;

1-55 (2) provide guidance to each state agency to identify
1-56 appropriate services for an injured employee;

1-57 (3) adopt rules that set standards and provide
1-58 guidance to a state agency interacting with an injured employee;
1-59 and

1-60 (4) implement any other services provided under
1-61 Section 413.021 that will facilitate the reintegration of an
1-62 injured employee.

1-63 Sec. 412.0126. ANALYSIS. (a) The board shall adopt rules
1-64 as necessary to collect data on lost time and return-to-work

2-1 outcomes of each state agency to allow full evaluations of
 2-2 successes and of barriers to achieving timely return to work after
 2-3 an injury.

2-4 (b) The office shall:

2-5 (1) collect and analyze data from each state agency
 2-6 regarding lost time, including sick leave and annual leave used by
 2-7 an injured employee;

2-8 (2) identify state agencies that need additional
 2-9 training or case management services related to return-to-work
 2-10 services;

2-11 (3) modify as necessary the office's assessment
 2-12 computation to encourage state agencies to effectively reduce
 2-13 workers' compensation costs;

2-14 (4) incorporate as necessary return-to-work goals
 2-15 developed by the division of workers' compensation under Section
 2-16 413.025;

2-17 (5) work with the workers' compensation research and
 2-18 evaluation group to develop analytical tools to assist the office
 2-19 with its duties under this section;

2-20 (6) require state agencies to report information in a
 2-21 standardized format;

2-22 (7) monitor the information reported by each state
 2-23 agency; and

2-24 (8) evaluate the information provided under this
 2-25 section to determine outcomes over time for each state agency.

2-26 Sec. 412.0127. PAYMENT BY ELECTRONIC FUNDS TRANSFER.

2-27 (a) Except as provided by Subsection (b), the office shall pay an
 2-28 employee entitled to an indemnity benefit payment using the same
 2-29 payment method as the method by which the employee receives the
 2-30 employee's wages.

2-31 (b) The office shall adopt rules to facilitate the use of
 2-32 electronic funds transfer as the preferred method of payment under
 2-33 this section.

2-34 (c) The office may issue an indemnity benefit payment by
 2-35 check on request or if electronic funds transfer is not feasible.

2-36 Sec. 412.0128. STUDY ON CATASTROPHIC CLAIMS. (a) The
 2-37 office shall study options to prepare state agencies for
 2-38 catastrophic claims.

2-39 (b) The study must include information on:

2-40 (1) establishing a state employee workers'
 2-41 compensation catastrophe fund outside the state treasury;

2-42 (2) purchasing catastrophe reinsurance; and

2-43 (3) other options to prepare the state for
 2-44 catastrophic claims.

2-45 (c) In performing duties under Subsections (a) and (b), the
 2-46 office:

2-47 (1) shall work with the workers' compensation research
 2-48 and evaluation group; and

2-49 (2) may contract with a consultant to:

2-50 (A) analyze predicted costs of potential
 2-51 disasters; and

2-52 (B) estimate the appropriate size for a
 2-53 catastrophe fund or level of reinsurance.

2-54 (d) Not later than September 1, 2008, the office shall
 2-55 report the findings of the study conducted under this section to the
 2-56 lieutenant governor, the speaker of the house of representatives,
 2-57 and the appropriate standing committees of the house of
 2-58 representatives and senate with responsibility for oversight of the
 2-59 office.

2-60 (e) This section expires September 2, 2008.

2-61 SECTION 3. Section 412.021, Labor Code, is amended by
 2-62 adding Subsections (a-1), (g), and (h) and amending Subsections (d)
 2-63 and (f) to read as follows:

2-64 (a-1) A person may not be a member of the board if the person
 2-65 or the person's spouse:

2-66 (1) is registered, certified, or licensed by a
 2-67 regulatory agency in the field of insurance or health care;

2-68 (2) is employed by or participates in the management
 2-69 of a business entity or other organization regulated by or

3-1 receiving money from the office;
 3-2 (3) owns or controls, directly or indirectly, more
 3-3 than a 10 percent interest in a business entity or other
 3-4 organization regulated by or receiving money from the office; or
 3-5 (4) uses or receives a substantial amount of tangible
 3-6 goods, services, or money from the office other than compensation
 3-7 or reimbursement authorized by law for risk management board
 3-8 membership, attendance, or expenses.

3-9 (d) The governor shall designate one member of the board as
 3-10 presiding officer. The presiding officer shall serve in that
 3-11 capacity at the pleasure of the governor [~~for a two-year term~~].

3-12 (f) The risk management board and the office are [~~is~~]
 3-13 subject to Chapter 325, Government Code (Texas Sunset Act). Unless
 3-14 continued in existence as provided by that chapter, the board is
 3-15 abolished and this section expires September 1, 2019 [~~2007~~].

3-16 (g) Appointments to the board shall be made without regard
 3-17 to the race, color, disability, sex, religion, age, or national
 3-18 origin of the appointee.

3-19 (h) The board shall develop and implement policies that
 3-20 clearly separate the policymaking responsibilities of the board and
 3-21 the management responsibilities of the director and the staff of
 3-22 the risk management office.

3-23 SECTION 4. Section 412.022, Labor Code, is amended to read
 3-24 as follows:

3-25 Sec. 412.022. TRAINING PROGRAM FOR BOARD MEMBERS. (a) A
 3-26 person who is appointed to and qualifies for office as a member of
 3-27 the board may not vote, deliberate, or be counted as a member in
 3-28 attendance at a meeting of the board until the person completes a
 3-29 training program that complies with this section [~~To be eligible to~~
 3-30 take office as a member of the board, a person appointed to the
 3-31 board must complete at least one course of a training program that
 3-32 complies with this section. If the course has not been completed at
 3-33 the time of the appointment, the training program is to be completed
 3-34 within six months from the date of appointment, failure of which
 3-35 constitutes grounds for removal from the board].

3-36 (b) A training program established under this section must
 3-37 provide information to the member regarding:

3-38 (1) the enabling legislation that created the office
 3-39 and the office's programs, functions, rules, and budget [~~board~~];

3-40 (2) the results of the most recent formal audit of the
 3-41 office [~~program operated by the board~~];

3-42 (3) the requirements of laws relating to open
 3-43 meetings, public information, administrative procedure, and
 3-44 conflicts of interest [~~role and functions of the board~~]; and

3-45 (4) [~~the rules of the board, with an emphasis on the~~
 3-46 rules that relate to disciplinary and investigatory authority;

3-47 [~~(5) the current budget for the board;~~

3-48 [~~(6) the results of the most recent formal audit of the~~
 3-49 board;

3-50 [~~(7) the requirements of:~~

3-51 [~~(A) the open meetings law, Chapter 551,~~
 3-52 Government Code;

3-53 [~~(B) the public information law, Chapter 552,~~
 3-54 Government Code; and

3-55 [~~(C) the administrative procedure law, Chapter~~
 3-56 2001, Government Code;

3-57 [~~(8) the requirements of the conflict of interest laws~~
 3-58 and other laws relating to public officials; and

3-59 [~~(9)~~] any applicable ethics policies adopted by the
 3-60 office [~~board~~] or the Texas Ethics Commission.

3-61 (c) A person appointed to the board is entitled to
 3-62 reimbursement, as provided by the General Appropriations Act, for
 3-63 the travel expenses incurred in attending the training program
 3-64 regardless of whether the attendance at the program occurs before
 3-65 or after the person qualifies for office.

3-66 SECTION 5. Section 412.023, Labor Code, is amended to read
 3-67 as follows:

3-68 Sec. 412.023. EFFECT OF LOBBYING ACTIVITY. (a) In this
 3-69 section, "Texas trade association" means a cooperative and

4-1 voluntarily joined statewide association of business or
 4-2 professional competitors in this state designed to assist its
 4-3 members and its industry or profession in dealing with mutual
 4-4 business or professional problems and in promoting their common
 4-5 interest.

4-6 (b) A person may not be a member of the board and may not be
 4-7 an employee of the office employed in a "bona fide executive,
 4-8 administrative, or professional capacity," as that phrase is used
 4-9 for purposes of establishing an exemption to the overtime
 4-10 provisions of the federal Fair Labor Standards Act of 1938 (29
 4-11 U.S.C. Section 201 et seq.) if:

4-12 (1) the person is an officer, employee, or paid
 4-13 consultant of a Texas trade association in the field of insurance or
 4-14 health care; or

4-15 (2) the person's spouse is an officer, manager, or paid
 4-16 consultant of a Texas trade association in the field of insurance or
 4-17 health care.

4-18 (c) A person may not serve as a member of the board or act as
 4-19 the general counsel to the board if the person is required to
 4-20 register as a lobbyist under Chapter 305, Government Code, because
 4-21 of the person's activities for compensation on behalf of a
 4-22 profession related to the operation of the office [~~that is~~
 4-23 ~~regulated by or that has fees regulated by the board~~].

4-24 SECTION 6. Section 412.024, Labor Code, is amended by
 4-25 amending Subsection (a) and adding Subsection (a-1) to read as
 4-26 follows:

4-27 (a) It is a ground for removal from the board if a member:

4-28 (1) does not have at the time of taking office
 4-29 [appointment] the qualifications required by [~~for appointment to~~
 4-30 ~~the board other than the requirements of~~] Section 412.021
 4-31 [412.022];

4-32 (2) does not maintain during service on the board the
 4-33 qualifications required by Section 412.021 [~~for appointment to the~~
 4-34 ~~board~~];

4-35 (3) is ineligible for membership under Section 412.021
 4-36 or [~~violates a prohibition established by Section~~] 412.023;

4-37 (4) cannot because of illness or incapacity discharge
 4-38 the member's duties for a substantial part of the member's term [~~for~~
 4-39 ~~which the member is appointed~~]; or

4-40 (5) is absent from more than half of the regularly
 4-41 scheduled board meetings that the member is eligible to attend
 4-42 during a calendar year without an excuse approved by a majority vote
 4-43 of the board.

4-44 (a-1) The validity of an action of the board is not affected
 4-45 by the fact that it is taken when a ground for removal of a board
 4-46 member exists.

4-47 SECTION 7. Subchapter C, Chapter 412, Labor Code, is
 4-48 amended by adding Section 412.027 to read as follows:

4-49 Sec. 412.027. USE OF TECHNOLOGY. The board shall implement
 4-50 a policy requiring the office to use appropriate technological
 4-51 solutions to improve the office's ability to perform its functions.
 4-52 The policy must ensure that the public is able to interact with the
 4-53 office on the Internet.

4-54 SECTION 8. Section 412.032, Labor Code, is amended to read
 4-55 as follows:

4-56 Sec. 412.032. BOARD'S REPORT TO LEGISLATURE. (a) Based on
 4-57 the recommendations of the director, the board shall report to each
 4-58 legislature relating to:

4-59 (1) methods to reduce the exposure of state agencies
 4-60 to the risks of property and liability losses, including workers'
 4-61 compensation losses;

4-62 (2) the operation, financing, and management of those
 4-63 risks; [~~and~~]

4-64 (3) the handling of claims brought against the state;

4-65 (4) return-to-work outcomes under Section 412.0126
 4-66 for each state agency; and

4-67 (5) the business continuity plan developed by each
 4-68 state agency under Section 412.054.

4-69 (b) The report must include:

5-1 (1) the frequency, severity, and aggregate amount of
 5-2 open and closed claims in the preceding biennium by category of
 5-3 risk, including final judgments;

5-4 (2) the identification of each state agency that has
 5-5 not complied with the risk management guidelines and reporting
 5-6 requirements of this chapter; ~~and~~

5-7 (3) recommendations for the coordination and
 5-8 administration of a comprehensive risk management program to serve
 5-9 all state agencies, including recommendations for any necessary
 5-10 statutory changes;

5-11 (4) a report of outcomes by state agency of lost time
 5-12 due to employee injury and return-to-work programs based on the
 5-13 information collected and analyzed by the office in Section
 5-14 412.0126; and

5-15 (5) an evaluation of the business continuity plan
 5-16 developed by a state agency under Section 412.054 for completeness
 5-17 and viability.

5-18 SECTION 9. Subchapter D, Chapter 412, Labor Code, is
 5-19 amended by adding Section 412.034 to read as follows:

5-20 Sec. 412.034. PUBLIC HEARING. The board shall develop and
 5-21 implement policies that provide the public with a reasonable
 5-22 opportunity to appear before the board and to speak on any issue
 5-23 under the jurisdiction of the office.

5-24 SECTION 10. Subchapter D, Chapter 412, Labor Code, is
 5-25 amended by adding Section 412.035 to read as follows:

5-26 Sec. 412.035. DISPUTE RESOLUTION. (a) The board shall
 5-27 develop and implement a policy to encourage the use of:

5-28 (1) negotiated rulemaking procedures under Chapter
 5-29 2008, Government Code, for the adoption of office rules; and

5-30 (2) appropriate alternative dispute resolution
 5-31 procedures under Chapter 2009, Government Code, to assist in the
 5-32 resolution of internal and external disputes under the office's
 5-33 jurisdiction.

5-34 (b) The office's procedures relating to alternative dispute
 5-35 resolution must conform, to the extent possible, to any model
 5-36 guidelines issued by the State Office of Administrative Hearings
 5-37 for the use of alternative dispute resolution by state agencies.

5-38 (c) The board shall designate a trained person to:

5-39 (1) coordinate the implementation of the policy
 5-40 adopted under Subsection (a);

5-41 (2) serve as a resource for any training needed to
 5-42 implement the procedures for negotiated rulemaking or alternative
 5-43 dispute resolution; and

5-44 (3) collect data concerning the effectiveness of those
 5-45 procedures, as implemented by the office.

5-46 SECTION 11. Subchapter F, Chapter 412, Labor Code, is
 5-47 amended by adding Section 412.054 to read as follows:

5-48 Sec. 412.054. BUSINESS CONTINUITY PLAN. (a) Each state
 5-49 agency shall work with the office to develop an agency-level
 5-50 business continuity plan that outlines procedures to keep the
 5-51 agency operational in case of disruptions to production, finance,
 5-52 administration, or other essential operations. The plan must
 5-53 include detailed information regarding resumption of essential
 5-54 services after a catastrophe, including:

5-55 (1) coordination with public authorities;

5-56 (2) management of media;

5-57 (3) customer service delivery;

5-58 (4) assessing immediate financial and operational
 5-59 needs; and

5-60 (5) other services as determined by the office.

5-61 (b) A business continuity plan is considered to meet the
 5-62 requirements of this section if the agency forwards the plan to the
 5-63 office for review and the agency is:

5-64 (1) involved in the delivery of emergency services as
 5-65 a member of the governor's Emergency Management Council; or

5-66 (2) part of the State Data Center program.

5-67 SECTION 12. Section 417.0082, Government Code, is amended
 5-68 to read as follows:

5-69 Sec. 417.0082. PROTECTION OF CERTAIN STATE-OWNED BUILDINGS

6-1 AGAINST FIRE HAZARDS. (a) The state fire marshal, under the
6-2 direction of the commissioner, shall take any action necessary to
6-3 protect a public building under the charge and control of the Texas
6-4 Building and Procurement [~~General Services~~] Commission, and the
6-5 building's occupants, against an existing or threatened fire
6-6 hazard. The state fire marshal and the Texas Building and
6-7 Procurement Commission shall include the State Office of Risk
6-8 Management in all communication concerning fire hazards.

6-9 (b) The commissioner, [~~and~~] the Texas Building and
6-10 Procurement Commission, and the risk management board [~~General~~
6-11 ~~Services Commission~~] shall make and each adopt by rule a memorandum
6-12 of understanding that coordinates the agency's duties under this
6-13 section.

6-14 SECTION 13. A state agency shall develop a business
6-15 continuity plan under Section 412.054, Labor Code, as added by this
6-16 Act, not later than May 1, 2008.

6-17 SECTION 14. Section 412.0127, Labor Code, as added by this
6-18 Act, applies to indemnity benefit payments made on or after
6-19 February 1, 2008.

6-20 SECTION 15. This Act takes effect September 1, 2007.

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